REMARKS

This is a full and timely response to the final Office Action of October 4, 2006. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Upon entry of this Fifth Response, claims 1-10, 17-27, 29-32, and 34-54 are pending in this application. Claim 45 is directly amended herein. Further, claims 11-16 are canceled without prejudice or disclaimer, and claims 46-54 are newly added. It is believed that the foregoing amendments add no new matter to the present application.

Attorney Docket Number

Since the filing of the instant application, the power of attorney has been changed to a new law firm, Thomas, Kayden Horstemeyer & Risley, L.L.P. ("TKHR"). Applicants respectfully request that the attorney docket number of the instant application be changed to "710101-1020" to reflect the number used by TKHR.

Response to §102 and §103 Rejections

A proper rejection of a claim under 35 U.S.C. §102 requires that a single prior art reference disclose each element of the claim. See, *e.g.*, *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983).

Claim 1

Claim 1 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Sven* (U.S. Patent Application Publication No. 2003/0005099 A1). Claim 1 presently reads as follows:

> 1. A communication system, comprising:
> a plurality of clients;
> a plurality of network elements; and
> an element management system (EMS) interfaced with the clients and the network elements, the EMS configured to track which of the network elements are of interest to the clients, *the EMS further configured to automatically poll the network elements based on which of the network elements are determined, by the EMS, to be of interest to the clients,* the EMS further configured to provide the clients with information indicative of the polled elements. (Emphasis added).

Applicants respectfully assert that *Sven* fails to disclose at least the features of claim 1 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 1 is improper.

In this regard, it is alleged in the outstanding Office Action that the above features of claim 1 are disclosed by *Sven* at Paragraph 52, lines 1-18, Paragraph 38, lines 1-15, and Paragraph 18, lines 1-16. See Page 2 of the Office Action. Applicants respectfully disagree.

In particular, Paragraph 52 of *Sven* indicates that clients 210 may subscribe to an "event manager 250 for property change events for those respective device properties that the client 210 controls." However, there is nothing in *Sven* to indicate that the manner in which the devices 210 are *polled* is in any way affected by which clients 210 have subscribed to property change events. Indeed, Paragraph 52 of *Sven* does not even discuss the manner in which the devices 210 may be polled. Instead, Paragraph 52 describes the actions taken by the event manager 250 *once the event manager 250 has discovered a property change for a device 205*. In particular, *Sven* teaches that "*when a property for a device 205 changes*, the event manager 250 identifies the clients 210 that

have subscribed to that property and forwards the change information to those clients 210 the next time the client 210 polls the event manager 250 for an update." Paragraph 52, lines 11-15, (emphasis added). Moreover, even if it is assumed *arguendo* that the event manager 250 learns of a property change for a device 205 by polling the device 205, it appears that such a polling operation would not be based on which clients have subscribed to property change events.

In addition, Paragraph 18, lines 10-17, indicates that each "software controllable device has an associated control object (CO)" that allows the event manager "to remotely control or query a physical device." Paragraph 38 appears to describe the "control objects" in more detail. Such sections suggest that the event manager 250 may query the devices 205. However, there is nothing in Paragraph 18 or 38 to indicate that the event manager 250 "automatically polls" the devices 205 based on which of the devices 205 are determined to be of interest to the clients. Moreover, there is nothing in *Sven* to indicate that any query submitted to any of the alleged "network elements" is based on the tracked interests of the clients.

For at least the reasons set forth above, Applicants respectfully assert that the Office Action fails to establish that the alleged "EMS" of *Sven* is configured to "track which of the network elements are of interest to the clients (and)… to *automatically poll* the network elements *based on which of the network elements are determined*, by the EMS, *to be of interest to the clients*," as described by claim 1. Accordingly, Applicants respectfully assert that *Sven* fails to disclose each feature of claim 1, and the 35 U.S.C. §102 rejection of claim 1 should, therefore, be withdrawn.

Claims 2-10, 27, 29-31, and 34-45

Claims 2-5, 27, 29-31, 39, and 43-45 presently stand rejected in the Office Action under 35

U.S.C. §102 as allegedly being anticipated by *Sven*. Further, claims 6-10 and 40-42 presently stand

rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Sven* in

view of *Bero* (U.S. Patent No. 6,895,431). Applicants submit that the pending dependent claims 2-

10, 27, 29-31, and 34-45 contain all features of their respective independent claim 1. Since claim 1

should be allowed, as argued hereinabove, pending dependent claims 2-10, 27, 29-31, and 34-45

should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600

(Fed. Cir. 1988). Further, several of these dependent claims recite patentably distinct features

and/or combination of features that make them allowable, notwithstanding the allowability of

independent claim 1.

For example, claim 6 reads as follows:

> 6. The system of claim 1, wherein the EMS is configured to store graphical
> user interface (GUI) code defining a GUI associated with one of the network
> elements, the EMS configured to retrieve the GUI code in response to a request
> received from one of the clients and to transmit the retrieved GUI code to the one
> client, wherein the request identifies the one network element.

Applicants respectfully assert that the alleged combination of *Sven* and *Bero* fails to suggest the

foregoing features of claim 6. Thus, the 35 U.S.C. §103 rejection of claim 6 is improper,

notwithstanding the allowability of claim 1.

In this regard, it is asserted in the Office Action that:

> "In claim 6, Sven teaches all the limitation wherein the EMS is configured to
> store code 'control object' defining an associated with one of the network elements
> 'devices properties,' the EMS 'Event Manager' configured to retrieve the code in
> response to a request received from one of the clients and to transmit the retrieved
> code to the one client, wherein the request identifies the one network element

- 18 -

(Paragraph 34, lines 1-6) (Paragraph 38, lines 1-15) (Paragraph 40, lines 1-8) (Paragraph 49, lines 1-11) but does not explicitly teach about a system of claim 1, wherein a graphical user interface (GUI) is used. Sven teaches about the need for an efficient way to present device setting information to a user interface (Paragraph 9, lines 1-10).

Bero (from applicant IDS) teaches of the need and benefit of using a GUI in a dynamic configuration operation in which users are allowed to view and change configuration information (Col 7, lines 5-15) (Col 7, lines 50-60) (Col 8, lines 20-35). GUI is known in the art to be user friendly as the complication of the underlying operating code is represented by a user-friendly graphical interface, which allows dynamic operation to be conducted efficiently."

However, Applicants submit that the pertinent issue is not whether it would be obvious to use a GUI to display data about the alleged "network element" but rather whether the cited art provides a motivation or reason for storing the code defining such a GUI in the alleged "EMS," as recited by claim 6. Moreover, even if it would be obvious to modify *Sven* to use a GUI at the alleged "clients" as alleged in the Office Action, there is nothing in the cited art to suggest that the GUI code should be stored at the alleged "EMS" or, much less, transmitted from the alleged "EMS" to an alleged "client." Accordingly, the Office Action fails to establish a *prima facie* case of obviousness with respect to claim 6.

In addition, claim 7 reads as follows:

> 7. The system of claim 6, wherein the EMS is configured to enable a user to update the stored GUI code, and *wherein the EMS is further configured to detect an update to the stored GUI code and to transmit the updated GUI code to the one client in response to a detection of the update*. (Emphasis added).

Applicants respectfully assert that the alleged combination of *Sven* and *Bero* fails to suggest the foregoing features of claim 7. Thus, the 35 U.S.C. §103 rejection of claim 7 is improper, notwithstanding the allowability of claim 1.

In this regard, it is asserted in the Office Action that the features of claim 7 are suggested by *Sven* at paragraph 48, which appears to describe techniques for allowing clients to manage the "control objects." Even if it is assumed *arguendo* that the "control objects" of *Sven* constitute "GUI code," Applicants assert that the teachings of Paragraph 48 are inadequate to suggest the features of claim 7. In this regard, there is nothing in Paragraph 48 of *Sven* to suggest that any "control object," which is software (see paragraph 40, line 1), is transmitted to a client *in response* to an update of the "control object." Further, *Bero* fails to remedy the deficiencies of *Sven*. Accordingly, Applicants submit that the cited art fails to suggest "wherein the EMS is further configured to detect an update to the stored GUI code and to *transmit the updated GUI code to the one client in response to a detection of the update*," as recited by claim 7. (Emphasis added). For at least the foregoing reasons, Applicants respectfully submit that the 35 U.S.C. §103 rejection of claim 7 should be withdrawn, notwithstanding the allowability of claim 1.

Furthermore, the cited art fails to suggest that, in response to the *same* request from an alleged "client," updated "GUI code" should be transmitted to an alleged "client" *and* "data indicative of which of the clients are interested in which of the network elements" should be updated. Thus, the cited art fails to suggest an "EMS" configured to transmit "in response to a request received from one of the clients… the retrieved GUI code to the one client," as described by claim 6, *and* to "update the data in response to the request," as described by claim 8, which depends from claim 6. For at least this reason, Applicants respectfully submit that the 35 U.S.C. §103 rejection of claim 8 should be withdrawn, notwithstanding the allowability of claim 1.

In addition, claim 37 recites features similar to those recited by pending claim 6. For at least reasons similar to those set forth hereinabove in the arguments for allowance of claim 6, Applicants

respectfully submit that the Office Action fails to establish a *prima facie* case of obviousness with respect to claim 37.

Claim 40 reads as follows:

> 40. The communication system of claim 39, wherein one of the clients is configured to run graphical user interface (GUI) code defining a GUI associated with one of the network elements, and *wherein the EMS is configured to update the data to indicate that the one client is not interested in the one network element in response to a user closing the GUI associated with the one network element.* (Emphasis added).

Applicants respectfully assert that the alleged combination of *Sven* and *Bero* fails to suggest the foregoing features of claim 40. Thus, the 35 U.S.C. §103 rejection of claim 40 is improper, notwithstanding the allowability of claim 1.

In this regard, it is alleged in the Office Action that *Sven* teaches:

> "displaying a GUI at the one client based on the GUI code transmitted in the transmitting step (Covered in claim 6) (Sven Paragraph 48, lines 1-12); receiving a user input (Sven Paragraph 48, lines 1-12); closing the displayed GUI in response to the user input (Sven Paragraph 33, lines 1-10); and updating the data in response to the closing step (Sven Paragraph 33, lines 1-10). A GUI running on tope of TCP/IP (connection oriented) requires the establishment of a session when in operation. By closing the GUI, the session is terminated according to the protocol of TCP/IP, which is communicated to the destination (EMS) while in the process of closing the session." Page 14.

Even if the closing of a GUI is communicated to the alleged "EMS," as alleged in the Office Action, the cited art fails to provide a motivation or reason for updating, *in response* to such message, any "data" used for selecting "which of the network elements are to be automatically polled." Thus, Applicants respectfully assert that the Office Action fails to establish a *prima facie* case of obviousness with respect to at least the features of "wherein the EMS is configured to update the data to indicate that the one client is not interested in the one network element *in*

response to a user closing the GUI" wherein "the EMS is configured to select, ***based on the data***, which of the network elements are to be automatically polled," as recited by claim 40 and its base claim 39. (Emphasis added). For at least the above reasons, Applicants respectfully assert that the cited art fails to suggest each feature of claim 40, and the 35 U.S.C. §103 rejection of claim 40 should, therefore, be withdrawn, notwithstanding the allowability of claim 1.

Claim 44 reads "wherein the EMS is configured to periodically discover the data rate (of a communication device) by periodically polling the at least one network element." It is alleged in the Office Action that such features are disclosed by *Sven* at Paragraphs 18, 38, and 52. However, none of these Paragraphs even mention a "data rate" or, much less, indicate that the alleged "EMS" polls any of the alleged "network elements" in order to discover the data rate of the alleged "network element." Accordingly, Applicant respectfully asserts that *Sven* fails to disclose each feature of claim 44, and the 35 U.S.C. §102 rejection of claim 44 should be withdrawn, notwithstanding the allowability of claim 1.

Claim 17

Claim 17 presently stands rejected under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Claim 17 presently reads as follows:

> 17.   A method for managing elements of a communication network, comprising the steps of:
> ***tracking which of the network elements are of interest to a plurality of clients;***
> ***automatically polling the network elements based on the tracking step***; and
> providing the clients with information indicative of the polled elements.
> (Emphasis added).

For at least reasons similar to those set forth in the arguments for allowance of claim 1, Applicants respectfully assert that *Sven* fails to disclose at least the features of claim 17 highlighted hereinabove. Accordingly, the 35 U.S.C. §102 rejection of claim 17 should be withdrawn.

Claims 18-26 and 32

Claims 18-21 and 32 presently stand rejected in the Office Action under 35 U.S.C. §102 as allegedly being anticipated by *Sven*. Further, claims 22-26 presently stand rejected in the Office Action under 35 U.S.C. §103 as allegedly being unpatentable over *Sven* in view of *Bero*. Applicants submit that the pending dependent claims 18-26 and 32 contain all features of their respective independent claim 17. Since claim 17 should be allowed, as argued hereinabove, pending dependent claims 18-26 and 32 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Claim 46

Claim 46 has been newly added via the amendments set forth herein. Claim 46 presently reads as follows:

> 46. A communication system, comprising:
> clients;
> network elements, the network elements comprising a first plurality and a second plurality; and
> an element management system (EMS) interfaced with the clients and the network elements, the EMS configured to define an instance of client profile data indicating which of the network elements are currently of interest to at least one of the clients, the instance of client profile data indicating that each of the first plurality of the network elements are currently of interest to at least one of the clients, wherein the EMS, after defining the instance of the client profile data, is configured to automatically poll, based on the client profile data, each of the first plurality of the network elements regardless of whether the EMS receives a message from any

of the clients indicating an interest in any of the first plurality of the network elements.

Applicants respectfully submit that the cited art fails to disclose or teach each of the above features of claim 46. Thus, claim 46 is allowable.

Claims 47-54

Claims have been newly added via the amendments set forth herein. Applicants submit that the pending dependent claims 47-54 contain all features of their respective independent claim 46. Since claim 46 should be allowed, as argued hereinabove, pending dependent claims 47-54 should be allowed as a matter of law for at least this reason. *In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

By:

Jon E. Holland
Reg. No. 41,077

100 Galleria Parkway, N.W.
Suite 1750
Atlanta, Georgia 30339
(256) 704-3900 Ext. 103